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Foreign Contract and Gift Reporting Deadline Approaches for Higher Education Institutions, As Does a Revised Reporting Process

By Jonathan D. Tarnow

As discussed in a [previous alert dated June 18, 2019](#), the U.S. Department of Education (the “Department”) over the last year increased its scrutiny of postsecondary institutions’ contracts with, and gifts from, foreign entities and individuals. In addition to initiating investigations into foreign funding received through contracts and donations by certain universities, it has broadly reminded the higher education community that Section 117 of the Higher Education Act (20 U.S.C. § 1011f) (“Section 117”) requires all domestic postsecondary institutions that receive any federal financial assistance (directly or indirectly) and that offer a bachelor’s degree or higher, or that offer a transfer program of not less than two years that is acceptable for credit toward a bachelor’s degree, to report to the Department information about (1) contracts with and gifts received from any foreign source, in either case exceeding \$250,000 in any calendar year; and (2) any ownership interests in or control over the institution by a foreign entity. These matters must be reported to the Department by January 31 and July 31 of each year for the preceding six-month period.

The longstanding method for institutions to report Section 117 matters has been the Department’s electronic application to participate in the Title IV federal student aid programs (the “e-app”), which institutions are required to update upon the occurrence of certain institutional changes or other reportable events. At the Department’s annual Federal Student Aid Training Conference in early December 2019, it announced that it would replace the e-app process with a new online portal for reporting foreign gifts and contracts in early 2020. In mid-December 2019, the Department submitted [an updated request to the Office of Management and Budget](#) (OMB) for approval of its proposed online portal reporting elements. Importantly, that submission by the Department to OMB confirms that institutions are not expected to report “*gifts from or contracts with a foreign source under \$250,000 unless the aggregate value of all gifts from and contracts with that foreign source within a calendar year total at least \$250,000, but that each separate gift or contract should be reported individually when the \$250,000 threshold from a foreign source is reached in the aggregate.*” The forthcoming online portal will significantly expand the [information detail required to be reported](#) by postsecondary institutions to the Department with respect to foreign contracts, gifts and ownership.

The following information will be required if an

institution is owned or substantially controlled, in any part, by a foreign source: (1) identity of the foreign source; (2) the date on which the foreign source assumed ownership or control; and (3) any changes in program or structure resulting from the change in ownership or control to foreign source.

With respect to gifts from foreign sources, institutions will be required to report, among other things: (1) the name of the foreign source, and whether the gift is from a foreign government or agency of a foreign government; (2) if the gift is from a legal entity created solely under the laws of a foreign country; (3) if the gift is from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; (4) if the gift is from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof; (5) the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity; (6) the amount and date of the gift; (7) the gift recipient including any intermediaries; and (8) a copy of the gift or donation agreement.

Regarding any contracts with a foreign source, institutions will be required to report, among other things: (1) the name of foreign source, and whether the contract is with a foreign government or agency of a foreign government; (2) whether the contract is with a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; (3) whether the contract is with an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; (4) the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity; (5) the contract amount, start date and end date; and (6) a copy of the contract.

If a covered gift or contract is restricted or conditional, in addition to the general reporting obligations outlined above, the reporting requirements further include a detailed description of all conditions or restrictions,

including whether they concern or relate to faculty, to academic departments or programs, to the admission of students, or to the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Because non-compliance with Section 117 could adversely affect an institution's continued participation in the Title IV federal student aid programs, as well as its receipt of other direct or indirect forms of Federal financial assistance, it is critical for institutions to timely determine whether it has reportable foreign gifts, contracts and ownership, and to report such matters within the required timeframes. We will continue to monitor Department and OMB activities with respect to these reporting obligations, in particular the launch of the new online reporting portal. In the meantime, please do not hesitate to contact the author or any member of our Education Law team if you have any questions regarding these reporting requirements, this alert, or other educational regulatory matters.

Contacts



Jonathan D. Tarnow

Partner, Education Law

Washington, D.C.

(202) 354-1357

Jonathan.Tarnow@dbr.com

Drinker Biddle

www.drinkerbiddle.com

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Jonathan I. Epstein and Andrew B. Joseph, Partners in Charge of the Princeton and Florham Park, N.J., offices, respectively.